

03-1315
Refund Request
Signed 05/11/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
)	AND FINAL DECISION
Petitioner,)	
v.)	
)	Appeal No. 03-1315
TAXPAYER SERVICES DIVISION,)	Account No. #####
UTAH STATE TAX COMMISSION,)	
)	Tax Type: Penalty & Interest
Respondent.)	
)	Judge: Phan

Presiding:

Palmer DePaulis, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, President PETITIONER
PETITIONER REPRESENTATIVE 2
For Respondent: RESPONDENT REPRESENTATIVE 1, Supervisor, Waiver Unit
RESPONDENT REPRESENTATIVE 2, Assistant Director Taxpayer Services
RESPONDENT REPRESENTATIVE 3, Tax Compliance Agent

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 1, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing penalties assessed for the late payment and late filing of Petitioner's corporate franchise tax for the July 1, 2000 through June 30, 2001 fiscal year ("FY-00-01").

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Petitioner does not argue for waiver of the interest. The penalties at issue are a \$\$\$\$ late filing penalty and a \$\$\$\$ late payment penalty.

3. Petitioner, a corporation, was organized in 1969.

4. For the fiscal years FY91-92 through FY97-98 Petitioner incurred losses. Therefore, Petitioner was required by law to pay only the \$\$\$\$ minimum annual corporate franchise tax and file a return for each of these fiscal years. However, Petitioner did not prepare or file the returns or pay the minimum tax annually as it became due. All of these returns were filed and paid late in October 2001.

5. In addition to failing to file or prepare the returns for fiscal years FY91-92 through FY97-98 records were not organized or maintained in a manner that would make it possible for a third party tax preparer to prepare the returns for the loss years without assistance from PETITIONER REPRESENTATIVE 1.

6. Petitioner's last asset was sold April 2, 2001 during the fiscal year at issue in this appeal, FY00-01. The sale of the asset resulted in a significant gain for Petitioner. It was after this event that Petitioner's representative, PETITIONER REPRESENTATIVE 1, prepared and filed prior years returns to claim losses to offset the gain.

7. However, in May 2001, PETITIONER REPRESENTATIVE 1 sustained a severe fracture of his right shoulder. This required an extensive surgical procedure, hospital stay, and a long postoperative and rehabilitation period. PETITIONER REPRESENTATIVE 1 was still suffering from problems related to this surgery through the middle of September 2001, which hampered his ability to prepare Petitioner's tax returns.

8. At this time, other than PETITIONER REPRESENTATIVE 1 and PETITIONER REPRESENTATIVE 2, the only other shareholder or person involved in the corporation was residing in an assisted living center and was not capable of preparing tax returns. As noted above the financial records were not kept in a manner that they could just be given to an accountant to prepare the returns.

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9. PETITIONER REPRESENTATIVE 1 was able to file loss returns for FY91-92 through FY97-98 in October 2001. However, he indicates he was confused on how to handle the loss carry back and carry forward for the year at issue. He indicates the state's method was different from the federal and also that the instructions for preparing the state return seemed to have changed over the years.

10. The tax return at issue was due on September 16, 2001 and was not filed until June 26, 2003.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(10).

Petitioner was required to file and pay annual corporate franchise tax returns during each of the loss years pursuant to Utah Code Ann. §59-7-505.

CONCLUSIONS OF LAW

Petitioner has not shown reasonable cause for waiver of penalties in this matter.

DECISION AND ORDER

Although Petitioner's representative argues that there has been no failure to promptly pay tax obligations in the past, this statement is incorrect and the period at issue was clearly not a first time error. For at least seven fiscal years Petitioner did not file and pay the annual tax returns as they became due. The fact that these returns had not been prepared and the documents not maintained in a manner conducive to preparing these returns quickly contributed to the late filing of the fiscal year at issue. It is clear that Petitioner's representative did suffer from serious medical problems just prior to around the due date of the return and had the return been filed within a few months of the due date there may have been some justification for waiver of some of the penalties. However, the return at issue was not filed until nearly two years after the due date. It is the finding of the Commission that the reason for the extensive delay was not primarily due to

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PETITIONER REPRESENTATIVE 1's injury.

Based upon the foregoing, the Tax Commission finds that sufficient cause has not been shown to justify a waiver of the penalties associated with Petitioner's late filing and late payment of is PY00-01 corporate franchise tax return. It is so ordered.

DATED this _____ day of _____, 2004.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2004.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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